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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,227	09/03/2003	Bin Yu	H1486	4868
45114	7590	12/08/2005	EXAMINER	
HARRITY SNYDER, LLP 11350 Randon Hills Road SUITE 600 FAIRFAX, VA 22030			PRENTY, MARK V	
			ART UNIT	PAPER NUMBER
			2822	

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/653,227

Applicant(s)

YU ET AL.

Examiner

MARK PRENTY

Art Unit

2822

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 November 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-4,6,7,16,18 and 19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Mark Prenty
Mark V. Prenty
Primary Examiner

Continuation of 3. NOTE: the proposed amendments to finally rejected independent claim 16 raise new issues that would require further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because: the applicants' arguments are incorrect.

First, the applicants' allegation: "By this amendment, Applicants propose amending claim 16 to improve form. Applicants submit that the features embodied in the amendments to claim 16 were either inherent or substantially included in previously examined claims. Accordingly, these amendments to do not raise new issues that require further search and/or consideration and should allow for immediate action by the Examiner," is incorrect. Specifically, the proposed amendments to finally rejected independent claim 16 (i.e., changing "gate material layer" to "gate") would substantively narrow the scope of finally rejected independent claim 16 as a whole and thus require further consideration and/or search. In this regard, the point is not that "the features embodied in the amendments to claim 16 were either inherent or substantially included in previously examined claims," but that proposed independent claim 16 as a whole raises a new issue requiring further consideration and/or search.

Furthermore, the applicants' allegation: "Although both Lin and Mathew disclose IGFETs, the IGFETs of Lin and Mathew are significantly different from one another...As can be plainly seen by a comparison of the figures of Lin and Mathew, the two different devices are structurally significantly different from one another," is without merit. Mathew's and Lin's IGFETs are simply not "significantly different from one another" by common IGFET definition, let alone by one skilled in the art familiar with their common gate sidewall spacers feature (indeed, even assuming for the sake of argument only that Mathew's and Lin's IGFETs are somehow "significantly different from one another," the fact remains that they are IGFETs with gate sidewall spacers, among other things, in common).

In response to the examiner's explanation: "Mathew does disclose to one skilled in the art that the first and second sidewall spacers cause a topology of the gate material layer to smoothly transition over the fin and the first and second sidewall spacers. In this regard, note newly cited United States Patent 4,807,013 to Manocha," the applicants remark: "Applicants respectfully disagree with the Examiner's assertion that Mathew discloses this feature of claim [2]." The applicants' remark is incorrect. Specifically, the examiner did not merely assert "that Mathew discloses this feature of claim [2]." Rather, by the applicants' own admission, the examiner explained: "Mathew does disclose TO ONE SKILLED IN THE ART that the first and second sidewall spacers cause a topology of the gate material layer to smoothly transition over the fin and the first and second sidewall spacers. IN THIS REGARD, NOTE NEWLY CITED UNITED STATES PATENT 4,807,013 TO MANOCHA" (i.e., the examiner explained what Mathew discloses TO ONE SKILLED IN THE ART, and cited Manocha as evidence of that).

The applicants' allegation: "An example of a smooth transition of the gate over the first and second sidewall spacers is shown in Applicants figure 5. In contrast, in Fig. 16 of Mathew, for instance, metal layer 66 of Mathew appears to sharply transition from the top of nitride layer 22 to the substrate," is without merit for several reasons. First, Mathew's figures are not necessarily drawn to scale. More substantively, at least to the extent that the applicant's and Mathew's drawings are relevant to claim 2, the better comparison is between applicant's Fig. 5 and Mathew's Fig. 14. The examiner respectfully submits that any difference in their gate over spacers topologies is a difference in smoothness degree, rather than a difference in "smooth" vs. "sharp" transition kind. Indeed, the examiner respectfully submits that one skilled in the art understands that Mathew's gate sidewall spacers 62' and 64' are provided to make overlying gate 66's topology relatively smoother, as evidenced by Manocha.

Finally, the applicants' remark: "if the Examiner intends to include Manocha in the rejection under 35 U.S.C. 103(a), Applicants request that the Examiner formally reject claim 2 based on Manocha and properly explain how Manocha can be fairly combined with Mathew and Lin," is without merit because Manocha is not being "combined" with Mathew and Lin in the 35 U.S.C. 103(a) rejection, it is merely evidence of what Mathew discloses to one skilled in the art.